

REMARKS

Claims 1-30 and 36-48 are currently pending in the application; however, claims 24, 26-30 and 42-46 remain withdrawn. Claim 1 is currently amended.

35 U.S.C. §103(a) Rejection of Claims 1-23, 25, 36-41, 47 and 48

The Examiner has rejected claims 1-23, 25, 36-41, 47 and 48 under 35 U.S.C. §103(a) in view of U.S. Pat. App. Pub. No. 2003/0208246 to *Kotlik, et al* (“*Kotlik*”) and further in view of U.S. Pat. No. 6,839,594 to *Cohen, et al.* (“*Cohen*”). Applicants respectfully disagree, at least for the reasons set forth below.

The Applicant has amended claim 1 to clarify a distinction in the way the Applicant’s controller is configured and the way the *Kotlik* controller is configured. As discussed previously, a feature of *Kotlik* is that it uses a single set of electrodes for both sensing and stimulating. A consequence of this apparatus configuration is that *Kotlik* can either sense or stimulate, but cannot perform both functions at the same time. See Para. 0080, lines 4-8 and 19-21 (where it describes having to switch from receiving to stimulating); Para. 0085, lines 1-3 (when in stimulation mode, receiving EMG impulses is eliminated); and Claim 1 (where the commutation block alternately transfers sensed EMG to the amplifier or transfers impulses from the stimulator).

In contrast, the Applicant’s controller is configured to sense EMG signals and stimulate using NMES simultaneously. See Page 2, lines 27-29 (where it is described that the healthy and paretic body parts move in synchrony, thus inferring sensing and stimulating would also occur in synchrony); page 3, lines 1-3 (where it is described that stimulating occurs when sensing happens); and page 6, lines 23-25 (where it is described that NMES is applied while EMG signals are detected).

It is noted that the addition of any other reference, for example *Cohen*, which describes the use of multiple sets of electrodes for providing sensing and stimulating separately and simultaneously (for example to sense from a healthy body part but to stimulate a paretic body part) would not work with *Kotlik* since the *Kotlik* controller can only sense or stimulate, but not do both at the same time. Not only is the *Kotlik* controller technically incapable of sensing and stimulating simultaneously, there is no reason for the *Kotlik* controller to do so, since it does not contemplate sensing from a healthy part while at the same time stimulating the paretic part.

For at least these reasons, claims 1-23, 25, 36-41, 47 and 48 are novel and nonobvious in view of *Kotlik* and *Cohen*.

General Remarks

Applicants note that the claims currently pending have already been searched by the European Patent Office and were indicated in the International Preliminary Report on Patentability as meeting the criteria of PCT Articles 33(2) - 33(4). In view of the favorable IPRP and the argument contained herein, Applicants submit that the application is in order for allowance. A notice to this effect is respectfully requested.

In the event that the Examiner believes that there are problems which would make it impossible to issue an allowance for all the claims, the Examiner is respectfully requested to call the undersigned.

Respectfully submitted,

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